

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Holding a Criminal Term**

**Grand Jury Sworn in on November 16, 2009**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO. 09-276 (PLF)</b>
	:	
<b>v.</b>	:	<b>VIOLATIONS:</b>
	:	
<b>STEWART DAVID NOZETTE,</b>	:	<b>18 U.S.C. § 794(a)</b>
	:	<b>(Attempted Espionage)</b>
	:	
<b>Defendant.</b>	:	<b>18 U.S.C. § 794(d)(1)</b>
	:	<b>Criminal Forfeiture</b>

**INDICTMENT**

The Grand Jury charges that:

**COUNT ONE**

At all times material to this Indictment, except as otherwise indicated:

1. **STEWART DAVID NOZETTE (NOZETTE)** was a United States citizen, born on May 20, 1957, in Chicago, Illinois. Defendant **NOZETTE** received a Ph.D. in Planetary Sciences from the Massachusetts Institute of Technology in 1983. Since that time, he has worked in various capacities on behalf of the United States government as an astrophysicist.
2. Defendant **NOZETTE** assisted in the development of the Clementine bi-static radar experiment which purportedly discovered water ice on the south pole of the moon. Defendant **NOZETTE**'s Clementine concept was later hailed as the vanguard of the new "faster, cheaper, better" revolution in space exploration.

3. Defendant **NOZETTE** worked as a physicist in the “O Division,” Advanced Concepts Group, at the United States Department of Energy’s (DOE) Lawrence Livermore National Laboratory from approximately 1990 to 1999, where he designed highly advanced technology. At DOE, defendant **NOZETTE** held a special security clearance, referred to as a DOE “Q” clearance. Q clearance is a DOE security clearance equivalent to the United States Department of Defense Top Secret and Critical Nuclear Weapon Design Information clearances. DOE clearances apply to information specifically relating to atomic or nuclear-related materials (“Restricted Data” under the Atomic Energy Act of 1954).

4. Defendant **NOZETTE** was the President, Treasurer and Director of the Alliance for Competitive Technology (ACT), a corporation that he organized in March 1990 for the stated purpose of serving “the national and public interest by conducting scientific research and educational activities aimed at expanding the utilization of National and Government Laboratory resources.”

5. Between approximately January 2000 and February 2006, defendant **NOZETTE**, through his company ACT, entered into agreements with several United States government agencies to develop highly advanced technology. Defendant **NOZETTE** performed some of this research and development at the United States Naval Research Laboratory (NRL) in Washington, D.C.; the Defense Advanced Research Projects Agency (DARPA) located in Arlington, Virginia; and the National Aeronautics and Space Administration’s (NASA) Goddard Space Flight Center located in Greenbelt, Maryland.

6. DARPA is the central research and development office for the United States Department of Defense. DARPA's mission is to maintain the technological superiority of the United States military and to prevent technological surprise from harming our national security.

7. NRL is a research laboratory that conducts scientific research and advanced technological development for the United States Navy and Marine Corps.

8. "Classified" information is defined in Executive Order 12958, as amended by Executive Order 13292, and Executive Order 13526, as information in any form that: (1) is owned by, produced by or for, or is under the control of the United States government; (2) falls within one or more of the categories set forth in the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security.

9. Where such unauthorized disclosure could reasonably result in "serious" damage to the national security, the information may be classified as "SECRET" and must be properly safeguarded. Where such damage could reasonably result in "exceptionally grave" damage to the national security, the information may be classified as "TOP SECRET" and must be properly safeguarded. Access to classified information at any level may be further restricted through compartmentation in "SENSITIVE COMPARTMENTED INFORMATION" (SCI) categories. SCI is classified information concerning or derived from intelligence sources, methods or analytical processes which must be handled within formal limited-access control systems established by the Director of National Intelligence.

10. When the vulnerability of, or threat to, specific classified information is exceptional; and the normal criteria for determining eligibility for access to classified information are insufficient to protect the information from unauthorized disclosure, the United States may establish “SPECIAL ACCESS PROGRAMS” (SAPs) to further protect the classified information. A SAP limits the number of persons who will have access, in order to further protect the information. Such materials are designated SPECIAL ACCESS REQUIRED (SAR).

11. Classified information, of any designation, may be shared only with persons determined by an appropriate United States government official to be eligible for access, and who possess a “need to know.” If a person is not eligible to receive classified information, classified information may not be disclosed to that person. In order for a foreign government to receive access to classified information, the originating United States agency must determine that such release is appropriate.

12. From 1998 through 2006, defendant **NOZETTE** held security clearances as high as TOP SECRET and was indoctrinated for access to a variety of SCI programs. During that time period, defendant **NOZETTE** had regular, frequent access to classified information and documents related to the national defense of the United States.

13. In consideration of his being granted access to classified information, defendant **NOZETTE** signed nondisclosure agreements with the United States on at least five occasions. Specifically:

a. On or about February 2, 2001, **NOZETTE** signed a SAP Indoctrination Agreement in which he agreed that:

I hereby accept the obligations contained in this Agreement in

consideration of my being granted access to information or materials protected within Special Access Programs, hereinafter referred to in this Agreement as SAP information (SAPI). . . . I understand and accept that by being granted access to SAPI, special confidence and trust shall be placed in me by the United States Government. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SAPI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. . . . I have been advised that any breach of this Agreement may result in the termination of my access to SAPI, removal from a position of special confidence and trust requiring such access, or termination of other relationships with any Department or Agency that provides me with access to SAPI. In addition, I have been advised that any unauthorized disclosure of SAPI by me may constitute violations of the United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(a), Title 50, United States Code. Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation. . . . Unless and until I am released in writing by an authorized representative of the Department or Agency that provided me the access(es) to SAPI . . . I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to SAPI, and at all times thereafter.

b. On or about October 3, 2002, **NOZETTE** signed a Classified Information Nondisclosure Agreement in which he acknowledged that:

. . . I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of [classified information] by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation.

. . . I have been advised that any unauthorized disclosure of [classified information] by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18 United States Code . . . . Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

. . . I understand that all information to which I may obtain access

by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law . . . . I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access . . . upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such material.

c. On or about September 16, 2004, **NOZETTE** signed a Sensitive

Compartmented Information Nondisclosure Agreement in which he acknowledged that:

. . . I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures.

. . . I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be SCI, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.

. . . I have been advised that . . . any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code . . . .

d. On or about August 23, 2005, **NOZETTE** signed another SCI

Nondisclosure Agreement, in which he reaffirmed he had received security indoctrinations and understood, among other things, that he had been advised that the direct or indirect unauthorized

disclosure by him of SCI information “could cause irreparable injury to the United States, and be used to advantage by a foreign nation,” and pledged, “I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it . . .” He also re-acknowledged he had been advised that such unauthorized disclosure could constitute violations of criminal laws including Title 18, United States Code, Section 794.

14. On or about March 17, 2006, **NOZETTE** was notified by the United States government that his access to SCI had been suspended and he was reminded of his continuing obligation to comply with the terms of the Nondisclosure Agreements he had signed.

15. From on or about September 3, 2009, until on or about September 17, 2009, in the District of Columbia, **STEWART DAVID NOZETTE**, did knowingly and unlawfully attempt to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, directly and indirectly, documents and information relating to the national defense of the United States, specifically, documents and information classified SECRET/SCI which directly concerned classified aspects and mission capabilities of a prototype overhead collection system and which disclosure could negate the ability to support military and intelligence operations, with the intent and reason to believe that such documents and information were to be used to the injury of the United States and to the advantage of a foreign government, namely, the Government of the State of Israel.

**(Attempted Espionage**, in violation of Title 18, United States Code, Section 794(a).)

**COUNT TWO**

16. Paragraphs 1 through 14 of Count One of this Indictment are hereby incorporated by reference as if fully realleged and restated herein.

17. From on or about September 3, 2009, until on or about September 17, 2009, in the District of Columbia, **STEWART DAVID NOZETTE**, did knowingly and unlawfully attempt to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, directly and indirectly, documents and information relating to the national defense of the United States, specifically, documents and information classified SECRET and controlled through special handling controls, which directly concerned classified aspects and mission capabilities of a United States Navy system which directly involved satellite operations and which disclosure could negate or diminish the ability to support military and intelligence operations, with the intent and reason to believe that such documents and information were to be used to the injury of the United States and to the advantage of a foreign government, namely, the Government of the State of Israel.

**(Attempted Espionage**, in violation of Title 18, United States Code, Section 794(a).)

**COUNT THREE**

18. Paragraphs 1 through 14 of Count One of this Indictment are hereby incorporated by reference as if fully realleged and restated herein.

19. From on or about September 17, 2009, until on or about October 1, 2009, in the District of Columbia, **STEWART DAVID NOZETTE**, did knowingly and unlawfully attempt to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, directly and indirectly,

documents and information relating to the national defense of the United States, specifically, documents and information classified TOP SECRET/SCI and SECRET/SCI which directly concerned satellites, early warning systems, means of defense or retaliation against large-scale attack, communications intelligence information, and major elements of defense strategy, with the intent and reason to believe that such documents and information were to be used to the injury of the United States and to the advantage of a foreign government, namely, the Government of the State of Israel.

(**Attempted Espionage**, in violation of Title 18, United States Code, Section 794(a).)

#### **COUNT FOUR**

20. Paragraphs 1 through 14 of Count One of this Indictment are hereby incorporated by reference as if fully realleged and restated herein.

21. On or about October 5, 2009, in the District of Columbia, **STEWART DAVID NOZETTE**, did knowingly and unlawfully attempt to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, directly and indirectly, documents and information relating to the national defense of the United States, specifically, documents and information classified TOP SECRET/SAR which directly concerned the capabilities of a United States weapon system research and development effort, the unauthorized disclosure of which would defeat the effectiveness of United States weapon systems and defenses, with the intent and reason to believe that such documents and information were to be used to the injury of the United States and to the advantage of a foreign government, namely, the Government of the State of Israel.

(**Attempted Espionage**, in violation of Title 18, United States Code, Section 794(a).)

**FORFEITURE ALLEGATION**

1. The allegations set forth in Counts One through Four of this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code, Section 794(d)(1)(A) and (B).

2. As a result of the offenses alleged in Counts One through Four of this Indictment, defendant **STEWART DAVID NOZETTE** shall forfeit to the United States, any property, constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of attempted espionage, in violation of Title 18, United States Code, Section 794(a), and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation. Such property includes but is not limited to a money judgment in the amount of \$9,600, which represents a sum of money constituting, or derived from, proceeds obtained, directly or indirectly, as the result of attempted espionage, to wit: money requested and received by the defendant during the course of a Federal Bureau of Investigation undercover operation, and not subsequently recovered, and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the offenses alleged in Counts One through Four of the Indictment.

3. As a result of the offenses alleged in Counts One through Four of this Indictment, any and all interest that defendant **STEWART DAVID NOZETTE** has in the above-described property is vested in the United States and hereby forfeited to the United States pursuant to Title 18, United States Code, Section 794(d)(1)(A) and (B). If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;

- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

**(Criminal Forfeiture, in violation of Title 18, United States Code, Section 794(d)(1)(A) and (B).)**

A TRUE BILL:

FOREPERSON

/s/

Attorney of the United States in and for  
the District of Columbia